
WOMEN'S HEALTH PROTECTION ACT (ABORTION CLINIC REGULATIONS)

Model Legislation & Policy Guide
For the 2012 Legislative Year



Changing Law to Protect Human Life, State by State

INTRODUCTION

In the late 1960's and early 1970's, abortion proponents assured judges, legislators, and the public that legalizing abortion would be beneficial to the health and well-being of American women. In support of these arguments, they devised a litany of purported "advantages" of legalized abortion, which prominently included increased medical safety.

First, proponents argued, if abortion were legal, the procedure would be safer for women because it would become an accepted part of "mainstream medical care," proper surgical procedures would be followed, and skilled and reputable gynecologists and surgeons would perform the procedure. Second, legalized abortion would eliminate the 5,000 to 10,000 deaths that abortion advocates disingenuously claimed resulted from illegal or so-called "back-alley" abortions each year.¹ Finally, legalizing abortion would ensure that women received proper care before, during, and after the procedure. Legalized abortion would ensure that no woman would bleed to death - alone and in pain following an unsafe abortion.

These were the promises. But has it proven to be the reality? Has nearly 40 years of legal abortion eliminated these problems from our national consciousness? Sadly, it has not. Instead, abortion clinics across the nation have become the true "back-alleys" of abortion mythology. Legalized abortion has not eliminated substandard medical care, kept people without medical licenses from performing abortions, ended the use of dirty, unsanitary procedure rooms and

¹ However, the numbers of deaths from illegal abortion were greatly exaggerated, as were the claims that abortions were inherently unsafe before *Roe v. Wade*. For example, in 1960, Planned Parenthood's Director Mary Calderone wrote:

Abortion is no longer a dangerous procedure. This applies not just to therapeutic abortions as performed in hospitals but also so-called illegal abortions as done by physicians . . . abortion, whether therapeutic or illegal, is in the main no longer dangerous, because it is being done well by physicians.

Mary Calderone, *Illegal Abortion as a Public Health Problem*, 50 Am. J. Pub. Health 949 (July 1960).

Moreover, the late Dr. Bernard Nathanson, a founder of National Abortion and Reproductive Rights Actions League (NARAL), later conceded that these statistics were intentionally misleading:

How many deaths were we talking about when abortion was illegal? In NARAL, we generally emphasized the drama of the individual case, not the mass statistics, but when we spoke of the latter it was always "5,000 to 10,000 deaths a year." I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it . . . The overriding concern was to get the laws eliminated, and anything within reason which had to be done was permissible.

Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979), p. 193.

unsterile, inadequate instrumentation, ensured competent post-abortion care, nor prevented women from dying from unsafe abortions.

Case Study – Pennsylvania:

In February 2010, federal agents raided Kermit Gosnell’s West Philadelphia abortion clinic, the Women’s Medical Society, and found “deplorable and unsanitary” conditions including blood on the floors; parts of aborted children stored in jars; post-operative recovery areas that consisted solely of recliners; padlocked emergency exits; and broken and inoperable emergency equipment. During the course of the investigation, it was discovered that Gosnell typically did not arrive at the clinic until 6 pm each day and sanctioned the performance of gynecological exams and the administration of controlled substances and prescription medication by non-licensed staff at the clinic.

Following the raids, Gosnell’s license to practice medicine was immediately suspended and the clinic was closed down. During a later grand jury investigation, prosecutors learned that state health officials had ignored dozens of complaints against Gosnell and that the clinic had not been inspected since 1993. They also learned that Gosnell had been illegally performing late-term abortions, delivering viable babies and killing them by cutting their spinal cords with scissors.²

Case Study - Texas:

A recent investigation of dozens of Texas abortion clinics revealed hundreds of patient names and sensitive medical information illegally dumped by several abortion clinics – a clear violation of HIPAA, a federal law that protects the privacy of patient medical records; the illegal disposal of hazardous bio-medical and infectious waste, including tissue that appeared to be the partial remains of aborted babies; dirty and poorly-maintained conditions inside and outside the abortion clinics; drug violations including the illegal dumping of drug vials containing controlled substances and the availability and use of blank prescription slips; and widespread abuses of Texas’s informed consent law and the mandated 24-hour reflection period. Moreover, undercover calls and visits to the abortion clinics revealed a pattern of willingness to help minors evade the state’s parental consent law and of staff ignoring mandatory reporting requirements for suspected child sex abuse.³

² See Report of the Grand Jury, MISC. NO. 0009901-2008 (Jan. 11, 2011), *available at* <http://www.phila.gov/districtattorney/PDFs/GrandJuryWomensMedical.pdf> (last visited Aug. 30, 2011).

³ See Special Report: Widespread Abortion Abuses in Texas (Mar. 1, 2011), *available at* <http://www.operationrescue.org/archives/tx-abortion-abuses/> (last visited Aug. 30, 2011).

Case Study - Arizona:

A young mother bled to death from a two-inch laceration in her uterus. As she lay in what medical assistants described as a pool of blood that soaked the bedding and ran down the woman's legs, she was heard crying for help and asking what was wrong with her. Where was her doctor? He was eating lunch in the break room, refusing requests to check her condition, and later left her bleeding and unconscious to visit his tailor. The woman died after bleeding for two to three hours. Sadly, a hospital emergency room was less than five minutes down the street.⁴

Case Study - Kansas:

Two inspections of the same Topeka, Kansas abortion clinic discovered fetal remains stored in the same refrigerator as food; a dead rodent in the clinic hallway; overflowing, uncovered disposal bins containing medical waste; unlabeled, pre-drawn syringes with controlled substances in an unlocked refrigerator; improperly labeled and expired medicines; a carpeted floor in the surgical procedure room; and visible dirt and general disarray throughout the clinic. The abortionist, who operated the unsanitary clinic, also consistently violated practice guidelines for conscious sedation.⁵

Case Study – South Carolina:

In 1994, several women testified before the General Assembly of the South Carolina legislature that when they walked into some of the state's abortion clinics they saw bloody, unwashed sheets, bloody cots in recovery rooms, and dirty bathrooms. Clinic workers testified that the remains of unborn children were not disposed of properly, but rather rinsed down sinks.⁶

To help remedy the epidemic of substandard conditions at the nation's abortion clinics, Americans United for Life has developed the "Women's Health Protection Act," a comprehensive model for state abortion clinic regulations, based on national abortion care standards.

⁴ Phoenix Police Department Report, July 15, 1998; testimony of Dr. John I. Biskind, *State v. Biskind*, No. CR99-00198 (Ariz. Superior Ct.), Feb. 13, 2001.

⁵ Consent Order, Board of Healing Arts of the State of Kansas, Docket No. 50-H, Feb. 14, 2005; Final Order, Board of Healing Arts of the State of Kansas, Docket No. 50-H-58, June 14, 2005.

⁶ Dial, *Abortion: A Dirty Industry*, CITIZEN MAGAZINE, July 2001.

For more information, please contact AUL's Legislative Coordinator at (202) 741-4907 or Legislation@AUL.org.

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WOMEN’S HEALTH PROTECTION ACT

HOUSE/SENATE BILL No. _____
By Representatives/Senators _____

Section 1. Title.

This Act may be known and cited as the “Women’s Health Protection Act.”

Section 2. Legislative Findings and Purposes.

(a) The Legislature of the State of *[Insert name of State]* finds that:

- (1) The [*vast majority*] of all abortions in this State are performed in clinics devoted solely to providing abortions and family planning services. Most women who seek abortions at these facilities do not have any relationship with the physician who performs the abortion either before or after the procedure. They do not return to the facility for post-surgical care. In most instances, the woman’s only actual contact with the abortion provider occurs simultaneously with the abortion procedure, with little opportunity to ask questions about the procedure, potential complications, and proper follow-up care.
- (2) “The medical, emotional, and psychological consequences of an abortion are serious and can be lasting” *H.L. v. Matheson*, 450 U.S. 398, 411 (1981).
- (3) Abortion is an invasive, surgical procedure that can lead to numerous and serious (both short- and long-term) medical complications. Potential complications for abortion include, among others, bleeding, hemorrhage, infection, uterine perforation, uterine scarring, blood clots, cervical tears, incomplete abortion (retained tissue), failure to actually terminate the pregnancy, free fluid in the abdomen, acute abdomen, organ damage, missed ectopic pregnancies, cardiac arrest, sepsis, respiratory arrest, reactions to anesthesia, fertility problems, emotional problems, and even death.
- (4) The risks for second trimester abortions are greater than for first trimester abortions. The risk of hemorrhage, in particular, is greater, and the resultant

complications may require a hysterectomy, other reparative surgery, or a blood transfusion.

- (5) The State of [*Insert name of State*] has a legitimate concern for the public's health and safety. *Williamson v. Lee Optical*, 348 U.S. 483, 486 (1985).
 - (6) The State of [*Insert name of State*] "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 847 (1992).
 - (7) More specifically, the State of [*Insert name of State*] "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 428-29 (1983).
 - (8) The State of [*Insert name of State*] has "a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that ensure maximum safety for the patient." *Roe v. Wade*, 410 U.S. 113, 150 (1973).
 - (9) Since the Supreme Court's decision in *Roe v. Wade*, courts have recognized that for the purposes of regulation, abortion services are rationally distinct from other routine medical services, because of the "particular gravitas of the moral, psychological, and familial aspects of the abortion decision." *Greenville Women's Clinic v. Bryant*, 222 F.3d 157, 173 (4th Cir. 2000), *cert. denied*, 531 U.S. 1191 (2001).
- (b) Based on the findings in subsection (a) of this Act, it is the purpose of this Act to:
- (1) To regulate abortion clinics consistent with and to the extent permitted by the decisions of the Supreme Court of the United States and other courts.
 - (2) To provide for the protection of public health through the development, establishment, and enforcement of medically-appropriate standards of care in abortion clinics.

Section 3. Definitions.

As used in this Act only:

(a) “**Abortion**” means the act of using or prescribing any instrument [, *medicine, drug, or any other substance, device, or means*]⁷ with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use [, *prescription, or means*] is not an abortion if done with the intent to:

- (1) Save the life or preserve the health of the unborn child;
- (2) Remove a dead unborn child caused by spontaneous abortion; or
- (3) Remove an ectopic pregnancy.

(b) “**Abortion clinic**” means a facility, other than an accredited hospital, in which five (5) or more first trimester abortions in any month or any second or third trimester abortions are performed.

(c) “**Born-alive**,” with respect to a member of the species *homo sapiens*, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion.

(d) “**Conception**” and “**fertilization**” each mean the fusion of the human spermatozoon with a human ovum.

(e) “**Department**” means the [*Insert name of state health department or other appropriate agency*].

(f) “**Director**” means the Director of the [*Insert name of state health department or other appropriate agency*].

(g) “**Gestation**” means the time that has elapsed since the first day of the woman’s last menstrual period.

⁷ This language is used when state officials intend the regulations prescribed herein to apply to the provision of chemical abortions (such as the use of RU-486).

(h) “**Licensee**” means an individual, a partnership, an association, a limited liability company, or a corporation authorized by the *[Insert name of state health department or other appropriate agency]* to operate an abortion clinic.

(i) “**Physician**” means a person licensed to practice medicine in the State of *[Insert name of State]*. This term includes medical doctors and doctors of osteopathy.

(j) “**Unborn child**” means the offspring of human beings from conception until birth.

Section 4. Licensure requirements.

(a) Beginning on *[Insert effective date]*, all abortion clinics shall be licensed by the Department. Any existing abortion clinic, as defined by this Act, shall make application for licensure within ninety (90) days.

(b) An application for a license shall be made to the Department on forms provided by it and shall contain such information as the Department reasonably requires, which shall include affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as are lawfully prescribed hereunder. Additional information required by the Department shall be supplied on supplemental forms as needed.

(c) Following receipt of an application for license, the Department shall issue a license if the applicant and the facility meet the requirements established by this Act and the minimum standards, rules, and regulations adopted in pursuance thereof, for a period of one (1) year.

(d) A temporary or provisional license may be issued to an abortion clinic for a period of six (6) months in cases where sufficient compliance with minimum standards, rules, and regulations require an extension of time, if a disapproval has not been received from any other state or local agency otherwise authorized to inspect such facilities. The failure to comply must not be detrimental to the health and safety of the public.

(e) A license shall apply only to the location and licensee stated on the application and such license, once issued, shall not be transferable from one place to another or from one licensee to another. If the location of the facility is changed, the license shall be automatically revoked. A new application form shall be completed prior to all license renewals.

(f) An application for a license or renewal to operate an abortion clinic shall be accompanied by a fee of *[Insert appropriate amount]*, which is hereby levied as the license fee for operation of

an abortion clinic for a period of one (1) year. The fees herein levied and collected shall be paid into the *[general fund]*.

(g) Each license issued hereunder shall be for a period of one (1) year from the date of issuance unless sooner revoked, shall be on a form prescribed by the Department, and may be renewed from year to year upon application and payment of the license fee as in the case of procurement of the original license.

(h) The Department may deny, suspend, revoke, or refuse to renew a license in any case in which it finds that there has been a substantial failure of the applicant or licensee to comply with the requirements of this Act or the minimum standards, administrative rules, and regulations adopted by the Department pursuant to this Act. In such case, the Department shall furnish the person, applicant, or licensee thirty (30) days notice specifying reasons for the action.

(i) Any person, applicant, or licensee who feels aggrieved by the action of the Department in denying, suspending, revoking, or refusing to renew a license may appeal the Department's action in accordance with the delay, notice, and other procedures established *[Insert reference(s) to agency/administrative appeal procedure(s) within Department]*.

(j) Any person, applicant, or licensee aggrieved by the action of the *[appellate board or other appropriate agency or body]* may, within thirty (30) days after notification of such action, appeal suspensively to the *[Insert name of court]*. A record of all proceedings before the *[appellate board or other appropriate agency or body]* shall be made and kept on file with the *[appellate board or other appropriate agency or body]*. The *[appellate board or other appropriate agency or body]* shall transmit a certified copy of the record to the *[Name of court]*. The *[Name of court]* shall try the appeal *de novo*.

Section 5. Inspections and Investigations.

(a) The Department shall establish policies and procedures for conducting pre-licensure and re-licensure inspections of abortion clinics. Prior to issuing or reissuing a license, the Department shall conduct an on-site inspection to ensure compliance with the minimum standards, administrative rules, and regulations promulgated by the Department under the authority of this Act.

(b) The Department shall also establish policies and procedures for conducting inspections and investigations pursuant to complaints received by the Department and made against any

abortion clinic. The Department shall receive, record, and dispose of complaints in accordance with the established policies and procedures.

Section 6. Minimum standards, administrative rules, and regulations for abortion clinics.

The Department shall establish minimum standards, administrative rules, and regulations for the licensing and operation of abortion clinics. Such minimum standards, administrative rules, and regulations become effective upon approval by the Director.

Section 7. Administrative rules for abortion clinics.

(a) The Director shall adopt rules for an abortion clinic's physical facilities. At a minimum these rules shall prescribe standards for:

- (1) Adequate private space that is specifically designated for interviewing, counseling, and medical evaluations.
- (2) Dressing rooms for staff and patients.
- (3) Appropriate lavatory areas.
- (4) Areas for pre-procedure hand washing.
- (5) Private procedure rooms.
- (6) Adequate lighting and ventilation for abortion procedures.
- (7) Surgical or gynecologic examination tables and other fixed equipment.
- (8) Post-procedure recovery rooms that are supervised, staffed, and equipped to meet the patients' needs.
- (9) Emergency exits to accommodate a stretcher or gurney.
- (10) Areas for cleaning and sterilizing instruments.
- (11) Adequate areas for the secure storage of medical records and necessary equipment and supplies.

- (12) The display in the abortion clinic, in a place that is conspicuous to all patients, of the clinic's current license issued by the Department.
- (b) The Director shall adopt rules to prescribe abortion clinic supplies and equipment standards, including supplies and equipment that are required to be immediately available for use in an emergency. At a minimum these rules shall:
- (1) Prescribe required equipment and supplies, including medications, required for the performance, in an appropriate fashion, of any abortion procedure that the medical staff of the clinic anticipates performing and for monitoring the progress of each patient throughout the procedure and recovery period.
 - (2) Require that the number or amount of equipment and supplies at the clinic is adequate at all times to assure sufficient quantities of clean and sterilized durable equipment and supplies to meet the needs of each patient.
 - (3) Prescribe required equipment, supplies, and medications that shall be available and ready for immediate use in an emergency and requirements for written protocols and procedures to be followed by staff in an emergency, such as the loss of electrical power.
 - (4) Prescribe the mandated equipment and supplies for required laboratory tests and the requirements for protocols to calibrate and maintain laboratory equipment at the abortion clinic or operated by clinic staff.
 - (5) Require ultrasound equipment in all abortion clinics.
 - (6) Require that all equipment is safe for the patient and the staff, meets applicable federal standards, and is checked annually to ensure safety and appropriate calibration.
- (c) The Director shall adopt rules relating to abortion clinic personnel. At a minimum these rules shall require that:
- (1) The abortion clinic designate a medical director of the abortion clinic who is licensed to practice medicine [*and surgery*] in the State of [*Insert name of State*].

- (2) Physicians performing abortions are licensed to practice medicine [*and surgery*] in the State of [*Insert name of State*], demonstrate competence in the procedure(s) involved, and are acceptable to the medical director of the abortion clinic.
 - (3) The employment of at least one (1) physician with admitting privileges at an accredited hospital in this state and within thirty (30) miles of the licensed abortion clinic.
 - (4) Surgical assistants [*or other appropriate classification of health care provider*] receive training in counseling, patient advocacy, and the specific responsibilities of the services the surgical assistants [*or other appropriate classification of health care provider*] provide.
 - (5) Volunteers, if any, receive training in the specific responsibilities of the services the volunteers provide, including counseling and patient advocacy as provided in the rules adopted by the Director for different types of volunteers based on their responsibilities.
- (d) The Director shall adopt rules relating to the medical screening and evaluation of each abortion clinic patient. At a minimum these rules shall require:
- (1) A medical history including the following:
 - a. Reported allergies to medications, antiseptic solutions, or latex.
 - b. Obstetric and gynecologic history.
 - c. Past surgeries.
 - d. Medication that the patient is currently taking.
 - (2) A physical examination including a bimanual examination estimating uterine size and palpation of the adnexa.
 - (3) The appropriate pre-procedure testing including:
 - a. Urine or blood tests for pregnancy, if ordered by a physician.

- b. A test for anemia.
 - c. Rh typing, unless reliable written documentation of blood type is available.
 - d. Other tests as indicated from the physical examination.
- (4) An ultrasound evaluation for all patients who elect to have an abortion. The rules shall require that if a person who is not a physician performs an ultrasound examination, that person shall have documented evidence that the person completed a course or other acceptable training in the operation of ultrasound equipment as prescribed in rule. *[A physician or other health care professional shall review, at the request of the patient, the ultrasound evaluation results with the patient before the abortion procedure is performed, including permitting the patient to view the active ultrasound image and learn the probable gestational age of the unborn child.]*⁸
- (5) That the physician is responsible for estimating the gestational age of the unborn child based on the ultrasound examination and obstetric standards in keeping with established standards of care regarding the estimation of gestational age as defined in rule and shall write the estimate in the patient's medical history. The physician shall keep original prints of each ultrasound examination of a patient in the patient's medical history file.
- (e) The Director shall adopt rules relating to the abortion procedure. At a minimum these rules shall require:
- (1) That medical personnel are available to all patients throughout the abortion procedure.
 - (2) Standards for the safe conduct of abortion procedures that conform to obstetric standards in keeping with established standards of care regarding the estimation of gestational age as defined in rule.
 - (3) Appropriate use of local anesthesia, analgesia, and sedation if ordered by the physician.

⁸ If the state already maintains an ultrasound requirement for abortions, specific language from the statutes, administrative rule, or other appropriate source may be substituted here.

- (4) The use of appropriate precautions, such as the establishment of intravenous access at least for patients undergoing second or third trimester abortions.
 - (5) The use of appropriate monitoring of the vital signs and other defined signs and markers of the patient's status throughout the abortion procedure and during the recovery period until the patient's condition is deemed to be stable in the recovery room.
- (f) The Director shall adopt rules that prescribe minimum recovery room standards. At a minimum these rules shall require that:
- (1) Immediate post-procedure care consists of observation in a supervised recovery room for as long as the patient's condition warrants.
 - (2) The clinic arrange hospitalization if any complication beyond the management capability of the staff occurs or is suspected.
 - (3) A licensed health care professional who is trained in the management of the recovery area and is capable of providing basic cardiopulmonary resuscitation and related emergency procedures actively monitors patients in the recovery room.
 - (4) A physician with admitting privileges at an accredited hospital in this state and within thirty (30) miles of the abortion clinic remains on the premises of the abortion clinic until all patients are stable and are ready to leave the recovery room and to facilitate the transfer of emergency cases if hospitalization of the patient or a child born alive is necessary. A physician shall sign the discharge order and be readily accessible and available until the last patient is discharged.
 - (5) A physician discusses RhO(d) immune globulin with each patient for whom it is indicated and assures it is offered to the patient in the immediate post-operative period or that it will be available to her within seventy-two (72) hours after completion of the abortion procedure. If the patient refuses, a refusal form approved by the Department shall be signed by the patient and a witness and included in the medical record.
 - (6) Written instructions with regard to post-abortion coitus, signs of possible complications and problems, and general aftercare are given to each patient. Each

patient shall have specific instructions regarding access to medical care for complications, including a telephone number to call for medical emergencies.

- (7) There is a specified minimum length of time that a patient remains in the recovery room by type of abortion procedure and duration of gestation.
 - (8) The physician assures that a licensed health care professional from the abortion clinic makes a good faith effort to contact the patient by telephone, with the patient's consent, within twenty-four (24) hours after surgery to assess the patient's recovery.
 - (9) Equipment and services are located in the recovery room to provide appropriate emergency resuscitative and life support procedures pending the transfer of the patient or a child born alive to the hospital.
- (g) The Director shall adopt rules that prescribe standards for follow-up care. At a minimum these rules shall require that:
- (1) A post-abortion medical visit is offered and, if requested, scheduled for two (2) to three (3) weeks after the abortion procedure, including a medical examination and a review of the results of all laboratory tests.
 - (2) A urine [*or blood*] test for pregnancy is obtained at the time of the follow-up visit to rule out continuing pregnancy. If a continuing pregnancy is suspected, the patient shall be appropriately evaluated and a physician who performs abortions shall be consulted.
- (h) The Director shall adopt rules to prescribe minimum abortion clinic incident reporting. At a minimum these rules shall require that:
- (1) The abortion clinic records each incident resulting in a patient's or a child born alive's serious injury occurring at an abortion clinic and shall report them in writing to the Department within ten (10) days after the incident. For the purposes of this paragraph, "**serious injury**" means an injury that occurs at an abortion clinic and that creates a serious risk of substantial impairment of a major body organ or function.

- (2) If a patient's death occurs, other than the death of an unborn child properly reported pursuant to law, the abortion clinic reports it to the Department not later than the next Department work day.
- (3) Incident reports are filed with the Department and appropriate professional regulatory boards.
- (i) The Department shall not release personally identifiable patient or physician information.
- (j) The rules adopted by the Director pursuant to this Act do not limit the ability of a physician or other health care professional to advise a patient on any health issue.
- (k) The provisions of this Act and the rules and regulations adopted pursuant hereto shall be in addition to any other laws, rules, and regulations which are applicable to facilities defined as “**abortion clinics**” under this Act.

Section 8. Criminal Penalties.

- (a) Whoever operates an abortion clinic as defined in this Act without a valid license issued by the Department is guilty of [*Insert proper penalty/offense classification*].
- (b) Any person who intentionally, knowingly [, or *recklessly*] violates this Act or any rules and regulations adopted under this Act is guilty of [*Insert proper penalty/offense classification*].

Section 9. Civil Penalties and Fines.

- (a) Any violation of this Act or any rules and regulations adopted under this Act may be subject to a civil penalty or fine up to [*Insert appropriate amount*] imposed by the Department.
- (b) Each day of violation constitutes a separate violation for purposes of assessing civil penalties or fines.
- (c) In deciding whether and to what extent to impose fines, the Department shall consider the following factors:
 - (1) Gravity of the violation including the probability that death or serious physical harm to a patient or individual will result or has resulted;

- (2) Size of the population at risk as a consequence of the violation;
 - (3) Severity and scope of the actual or potential harm;
 - (4) Extent to which the provisions of the applicable statutes or regulations were violated;
 - (5) Any indications of good faith exercised by licensee;
 - (6) The duration, frequency, and relevance of any previous violations committed by the licensee; and
 - (7) Financial benefit to the licensee of committing or continuing the violation.
- (d) Both the Office of the Attorney General and the Office of the District Attorney [*or other appropriate classification such as "County Attorney"*] for the county in which the violation occurred may institute a legal action to enforce collection of civil penalties or fines.

Section 10. Injunctive Remedies.

In addition to any other penalty provided by law, whenever in the judgment of the Director, any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this Act, or any rule or regulation adopted under the provision of this Act, the Director shall make application to any court of competent jurisdiction for an order enjoining such acts and practices, and upon a showing by the Director that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Section 11. Construction.

- (a) Nothing in this Act shall be construed as creating or recognizing a right to abortion.
- (b) It is not the intention of this Act to make lawful an abortion that is currently unlawful.

Section 12. Right of Intervention.

The [*Legislature*], by joint resolution, may appoint one or more of its members, who sponsored or cosponsored this Act in his or her official capacity, to intervene as a matter of right in any case in which the constitutionality of this Act or any portion thereof is challenged.

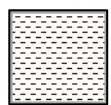
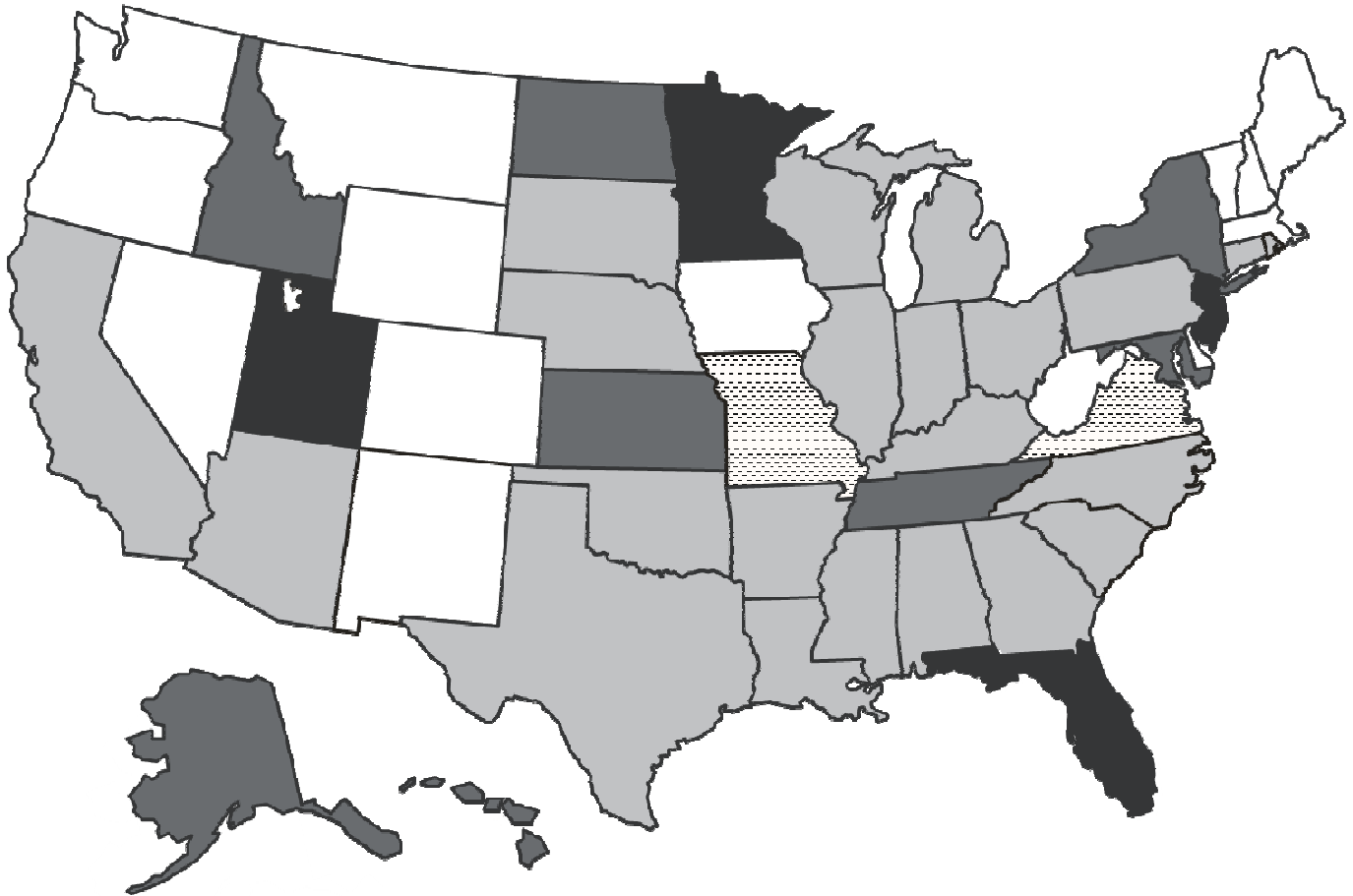
Section 13. Severability.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable here from and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

Section 14. Effective Date.

This Act takes effect on [*Insert date*].

STATE OF THE STATES: WHERE ARE WE NOW? ABORTION CLINIC REGULATIONS



Two states impose stringent ambulatory/outpatient surgical center standards on any facilities performing abortions: MO and VA (administrative regulations subject to approval).



Twenty-two states maintain varying degrees of abortion clinic regulations that apply to facilities performing abortions: AL, AZ, AR, CA, CT, GA, IL, IN, KY, LA, MI, MS, NE, NC, OH, OK, PA, RI, SC, SD, TX, and WI.



Four states regulate facilities performing post-first trimester abortions: FL, MN, NJ, and UT.



Eight states have abortion clinic regulations that are in litigation, enjoined or otherwise not enforced: AK, HI, ID, KS, MD, NY, ND, and TN.

More detailed information about the need and justification for comprehensive state abortion clinic regulations can be found in AUL's annual publication *Defending Life 2011: A State by State Legal Guide to Abortion, Bioethics, and the End of Life*.

Defending Life 2011 is available online at AUL.org.

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